

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 L-03 SS-15 EB-07 COME-00 H-02 SEC-01

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TO SECSTATE WASHDC IMMEDIATE 6799

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E.O. 11652: N/A

TAGS: PFOR, EIND, BDIS, ENRG, BL

SUBJECT: GULF OIL

REF: (A) STATE 121546; (B) LA PAZ

SUMMARY: REF A REQUESTS ANY INFO EMBASSY CAN PROVIDE ON REGULARITY OF BOLIVIAN LEGAL ACTIONS. INFO AVAILABLE TO US INDICATES THERE PROBABLY HAVE BEEN IRREGULARITIES, BUT THAT SOME BOLIVIAN LAWYERS DO NOT SEE THEM AS SO UNUSUAL AS TO CONSIDER THAT GOB HAS ACTED IN COMPLETEDLY EXTRA-LEGAL WAY. WHILE 48 HOUR ULTIMATUM WAS PURELY POLITICAL DECISION? TAKEN WITHOUT RECOURSE TO JUDICIAL PROCEDURE, THERE IS SOME BASIS FOR SUCH TIME LIMIT IN BOLIVIAN LAW. END SUMMARY.

1. APPEARS TO US THAT GOB, PROSECUTING ATTORNEY (FISCAL) AND INVESTIGATIVE JUDGE (JUEZ INSTRUCTOR) HAVE MADE NUMBER OF ERRORS WHICH WOULD BE CHARACTERIZED AS IRREGULAR. EMBASSY PRIVY TO VERY FEW DOCUMENTS IN THIS CASE, BUT PRESS HAS PRINTED WHAT IT CLAIMS ARE TEXTS OF MANY DOCUMENTS. LARGELY ON SUCH BASES, INFORMATION ON LEGAL REGULARITY IS OFFERED IN FOLLOWING

2. ONE LAWYER CHARACTERIZED STATEMENT OF PROSECUTING  
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ATTORNEY THAT HE WAS OPENING CRIMINAL CASE ON BASIS OF

INSTRUCTIONS OF PRESIDENT BANZER TO MINISTER OF INTERIOR AS BEING "UNCONSTITUTIONAL" ON GROUNDS THAT JUDICIAL SYSTEM, INCLUDING PROSECUTING ATTORNEY WHO IS ALSO OFFICIAL ON MINISTRY OF INTERIOR, IS ENTIRELY INDEPENDENT OF EXECUTIVE. ACCORDING THIS SOURCE, PROSECUTING ATTORNEY SHOULD HAVE BASED HIS ACTIONS ON EVIDENCE HE HAD RECEIVED. OTHER LAWYERS STATE THAT OPENING CRIMINAL CASE WAS ENTIRELY POLITICAL IN NATURE AND FOUNDED ON INADEQUATE EVIDENCE IN RELATION TO CHARGES, BUT THEY DO NOT THINK WOULD BE PROPER TO CRITICIZE PROSECUTING ATTORNEY OR JUDGE ON THESE GROUNDS.

3. ONE LAWYER SAID JUDGE'S IMPRISONMENT OF CARLOS DORADO WAS IN TOTAL ERROR, BECAUSE (1) PROCEDURE SHOULD HAVE BEEN INVESTIGATIVE; NOT PUNITIVE, (2) IF DORADO ARRESTED AND HELD BECAUSE HE WAS CONSIDERED GULF REPRESENTATIVE, IT WAS IMPROPER PROCEDURE BECAUSE COMPANY (PERSONA JURIDICA) CAN BE TRIED ONLY IN CIVIL CASE (3) IF DORADO ARRESTED AND HELD BECAUSE IT WAS BELIEVED HE MIGHT HAVE MADE ILLEGAL PAYMENTS OR ADVANCED IDEA OF MAKING SUCH PAYMENTS, WAS ALSO IMPROPER AS PROSECUTING ATTORNEY HAS ADVANCED NEITHER EVIDENCE NOR CHARGES SPECIFICALLY IMPLICATING DORADO (4) ARTICLES OF CRIMINAL CODE CITED BY PROSECUTING ATTORNEY (SEE REF B) ARE FROM CRIMINAL CODE DECREED IN 1973 WHICH WAS NOT IN EFFECT AT TIME OF SUSPECTED ILLEGAL PAYMENTS (I.E., CHARGES SHOULD HAVE BEEN MADE ON BASIS CRIMINAL CODE IN EFFECT AT TIME OF SUSPECTED ILLEGALITIES), AND (5) FIVE YEAR STATUTE OF LIMITATIONS APPEARS TO APPLY TO THIS CASE.

4. THIS LAWYER NOTED THAT DORADO HAD BEEN IMPRISONED ON TECHNICALITY THAT THERE APPEARED TO BE CONTRADICTION BETWEEN STATEMENTS THAT DORADO WAS OR WAS NOT GULF REPRESENTATIVE IN BOLIVIA. CLAIMS THAT IF DORADO HAD STATED HE WAS GULF REPRESENTATIVE (THOUGH HE DID NOT HAVE GULF POWER OF ATTORNEY) JUDGE WOULD HAVE HAD TO FIND OTHER BASIS FOR IMPRISONMENT. THIS LAWYER, AS WELL AS OTHERS, NEVERTHELESS STATES EMPHATICALLY THAT EVEN IF DORADO'S DEFENSE HAD BEEN MORE ADEPT DORADO WOULD HAVE BEEN JAILED BECAUSE OF POLITICAL NECESSITIES. THIS SOURCE (WHO IS NOT DORADO'S ATTORNEY) BELIEVES PROPER COURSE WOULD BE FOR JUDGE TO REMOVE CHARGES AND GRANT FULL LIBERTY TO DORADO.

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5. OTHER LAWYERS APPEAR TO BELIEVE THAT WHILE GOB MISTAKEN IN JAILING DORADO BECAUSE, AS IT TURNS OUT, IT HAS INSUFFICIENT EVIDENCE, THEY DO NOT FAULT GOB FOR FOLLOWING EXTRA-LEGAL PROCEDURES. THEY ALSO APPEAR TO BELIEVE THAT ONCE CRIMINAL CASE HAS BEEN INITIATED MUST PROCEED THROUGH CERTAIN STEPS, AND THAT CHARGES CANNOT BE SUMMARILY DISMISSED BECAUSE THEY WERE ILL-FOUNDED. AS DORADO'S LAWYERS HAVE REQUESTED PROVISIONAL LIBERTY, NEXT STEP WILL BE HEARING ON PROVISIONAL LIBERTY AND

SETTING OF BAIL FOLLOWED BY CONSIDERATION OF DEFENSE  
CONTENTION THAT NO EVIDENCE HAS BEEN PRESENTED TO SHOW  
THAT DORADO GUILTY UNDER ARTICLE 158 OF CRIMINAL CODE.  
DEFENSE ALSO APPARENTLY CONTENDING THAT NO OTHER ARTICLES  
OF CRIMINAL CODE CITED BY PROSECUTING ATTORNEY APPLY TO  
DORADO AND SUBMITTING EVIDENCE TO SHOW THAT DORADO DOES  
NOT HAVE GULF POWER OF ATTORNEY.

6. BOLIVIAN PROCEDURAL RULES APPARENTLY REQUIRE JUDGE  
TO ARRIVE AT FINAL RESOLUTION (AUTO) OF INVESTIGATION  
WITHIN 30 TO 40 DAYS AT WHICH TIME CHARGES AGAINST DORADO  
WILL EITHER BE DROPPED COMPLETELY FOR INSUFFICIENT EVIDENCE  
OR THERE WILL BE FINDING OF SUFFICIENT EVIDENCE FOR  
PROCEEDING WITH CRIMINAL TRIAL BEFORE ANOTHER JUDGE  
(JUEZ PLENARIO). INVESTIGATIVE JUDGE MIGHT ALSO BRING  
CRIMINAL CHARGES AGAINST OTHERS. FINALLY, JUDGE MIGHT  
DECIDE THERE ARE GROUNDS FOR INITIATING CIVIL CASE AGAINST  
GULF EITHER FOR ILLEGAL PAYMENTS OR FOR SLANDER (UNDOCUMENTED)  
OF INSUFFICIENTLY DOCUMENTED CHARGES OF CRIMES).

7. WHILE LAWYERS AGREE THAT POLITICAL CONTRIBUTIONS PER SE  
ARE NOT A CRIME UNDER BOLIVIAN LAW, THERE APPEARS TO BE  
FAIRLY COMMON BELIEF THAT BARRIENTOS DID NOT HAVE A POLITICAL  
PARTY WITH A STRUCTURE SUCH THAT RECIPIENT OF CONTRIBUTIONS  
LIKELY TO HAVE BEEN PURELY POLITICAL PARTY OFFICIAL AND NOT  
GOVERNMENT OFFICIAL. THUS, NO ONE APPEARS TO PLACE MUCH  
EMPHASIS ON POSSIBILITY THAT PROSECUTING ATTORNEY FAILED  
TO TAKE INTO ACCOUNT GULF USAGE OF TERM "POLITICAL  
CONTRIBUTIONS" WHEN HE CITED BRIBERY, EXTORTION, ETC.  
CLAUSES OF CRIMINAL CODE. THEY DO BELIEVE HE ACTED ON  
INSUFFICIENT EVIDENCE AND THAT CIVIL SUIT MIGHT HAVE  
BEEN MORE APPROPRIATE RATHER THAN CRIMINAL CHARGES.

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8. GOB 48-HOUR ULTIMATUM IN LAWYERS OPINION UNDOUBTEDLY  
PURELY POLITICAL DECISION AND NOT BASED ON ANY LEGAL  
PROCEEDINGS, EMBASSY WISHES DRAW ATTENTION, HOWEVER,  
TO ART. 118 OF CRIMINAL CODE (SEE REF B) WHICH REQUIRES  
PROSECUTION TO SUBMIT TO JUDGE WRITTEN REPORT ON CHARGES  
AND EVIDENCE, EVIDENCE ITSELF AND ARRESTED PERSONS WITHIN  
48 HOURS.  
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